



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Josco Construction, Inc.--Reconsideration

File: B-252453.3

Date: August 13, 1993

James G. Campbell, Esq., Ogden Newell & Welch, for the requester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where interested party was aware of protest but did not actively participate in process by presenting or responding to arguments until after the record was closed, party is not eligible to request reconsideration of decision sustaining protest.

DECISION

Josco Construction, Inc. requests reconsideration of our decision, Park Sys. Maint., Inc., B-252453; B-252453.2, June 16, 1993, 93-1 CPD ¶ 466, in which we sustained the protest of Park Systems Maintenance, Inc. against the award of a contract to Josco under request for proposals (RFP) No. DACW27-93-R-0027, issued by the U.S. Army Corps of Engineers for operation and maintenance services at Nolin River Lake, Brownsville, Kentucky. We held that the award to Josco was based on an improper technical evaluation, and recommended a new evaluation.


We deny the request because Josco is not eligible to seek reconsideration.

Our Bid Protest Regulations permit the protester and "any interested party who participated in the protest" to request reconsideration. 4 C.F.R. § 21.12(a) (1993). In promulgating this provision, we intended to limit reconsideration requests to parties with a sufficient interest in the matter, who engaged in the effort necessary to reasonably participate in the protest process before a decision was reached, thus ensuring that our decision on the matter would address all relevant information and issues, and minimize the possible disruption to the procurement

process that could result from a decision on reconsideration. Woodington Corp.--Recon., B-235957.2, Nov. 15, 1989, 89-2 CPD ¶ 461. Thus, where a party is on notice of a protest, that party's failure to participate actively in the original proceeding precludes it from requesting reconsideration. Tandem Computers, Inc.--Recon., B-221333.2 et al., Sept. 18, 1986, 86-2 CPD ¶ 315.

Although Josco became aware of the protest on February 24, 1993, when it received a stop-work order from the contracting officer, Josco did not express any interest in the matter to our Office until May 21, 1993, nearly 3 months later. In particular, we note that, although Josco had received copies of Park Systems's two protest letters and the agency's April 2 initial report on the protests, and thus was fully aware of the protest issues, it did not file comments on the report within 10 working days after receipt of the report, as required by our Regulations. See 4 C.F.R. § 21.3(j). In fact, Josco did not enter an appearance until after we had requested and received a supplemental agency report, received the protester's comments on that report, and closed the record. Under these circumstances, we conclude that Josco did not engage in the effort necessary to reasonably participate in the protest process before our decision was reached. See Woodington Corp.--Recon., supra. Josco therefore is not eligible to request reconsideration.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel